

(1933) 10 PRI CK 0004

In the Privy Council

Case No : Privy Council Appeal No. 59 of 1932

Abdul Majid Khan and another

APPELLANT

Vs

Sharaswatibai and others

RESPONDENT

Date of Decision : 30-10-1933

Acts Referred:

Citation : (1934) AIR(PC) 4

Hon'ble Judges : Lancelot Sanderson, Alness, Lords Thankerton, JJ.

Advocate : S.L. Polak, M.A. Jinnah, for the Appearing Parties.

Judgement

Lord Thankerton

The appellants in this case are the plaintiffs in an action on two promissory notes for sums of Rs. 4,000 each executed in or about the year 1925 by one Pandurang who died before the suit was brought, and the suit is brought against the surviving members of the joint family. It may be taken as established by the concurrent findings of the Courts below that at the time Pandurang was the karta of the joint family, and although the appellate Court was not quite satisfied in the matter, their Lordships are prepared to assume that it was necessary for the proper conduct of the joint family business that money should be borrowed from time to time in such a way on promissory notes. That being so, as is established by a judgment of this Board, it would be within the authority of the deceased as karta to borrow money in his own name for the purpose of the family business. The question then remains whether the two sums here in question were debts incurred by the deceased as karta of the joint family business, or in his own individual capacity. The promissory notes were signed by Pandurang in his own name and not in the name of the firm, and in their Lordships' opinion the promissory notes being signed by Pandurang in his own name is equally consistent either with a borrowing by him for his own individual purposes, or a borrowing for the purposes of the joint family business, and they are unable to accept the argument for the appellants, which was dealt with very fully and clearly by their counsel, Mr. Jinnah, that that state of facts would raise a

presumption that the borrowing was for the purpose of the joint family business.

It then remains to consider whether the plaintiffs have proved that these particular sums were borrowed by the deceased for the purpose of the joint family business. On that matter it is unnecessary to go through the evidence in detail, because the appellate Court have dealt with it fully, and their Lordships see no reason to differ from the conclusion at which they arrived, that the evidence is insufficient to prove the plaintiffs' case. It is right to observe that the learned trial Judge does not appear to have directed his mind towards the point which was made the subject of the unfavourable decision to the appellants in the appellate Court, and which has been the main subject of the argument before their Lordships. Accordingly, their Lordships agree with the conclusion of the appellate Court, and they will humbly advise His Majesty that this appeal should be dismissed.